UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MICHAEL FRANCO,	***)***	
	)	
Plaintiff	***)***	
	)	
v.	***)***	***Docket No. 96-281-P-H***
	)	
STAFFCO, INC., et al.,	***)***	
	)	
Defendants	***)***	

MEMORANDUM DECISION ON MOTION OF DEFENDANTS STAFFCO, INC., STAFFCO GREENHOUSES, INC., AND STAFFORD GLASS COMPANY TO SET ASIDE DEFAULT

Defendants Staffco, Inc., Staffco Greenhouses, Inc., and Stafford Glass Company, Inc. move to set aside the default entered against them in this action on October 29, 1996.[1] Docket No. 4. The motion to set aside the default was filed on May 27, 1997 (Docket No. 17), the last day for filing motions under the court's scheduling order (Docket No. 13).

Federal Rule of Civil Procedure 55(c) provides that an entry of default may be set aside "for good cause shown." Action on such a motion is discretionary with the court, "bounded by the specific circumstances of each case." *Coon v. Grenier*, 867 F.2d 73, 75 (1st Cir. 1989). Early in the case, the court should resolve doubts in favor of the party seeking relief from the entry of default. *Id*. at 76. The court must consider whether the default was willful, whether a meritorious defense

[1] Defendant George Riker, against whom default was also entered, has not moved to set aside the default.

is presented, and whether setting aside the default would prejudice the plaintiff. *Id*. The court may also examine the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. *Id.*

In this court, the moving party's burden is first to show both good cause for the default and the existence of a meritorious defense. If that showing is made, the court will then consider the remaining factors. *Wayne Rosa Constr., Inc. v. Hugo Key & Son, Inc.*, 153 F.R.D. 481, 482 (D. Me. 1994) (three week delay not excusable). Carelessness in clerical or technical practices does not constitute good cause. *Grover v. Commercial Ins. Co.*, 108 F.R.D. 366, 368 (D. Me. 1985). Here, the moving defendants assert that service was made on each of them on October 4, 1996 by service on Faith Wilkisson, then a full-time employee of Stafford Glass Company, Inc., and previously a part-time employee of Staffco Greenhouses, Inc. as well.[2] Affidavit of Faith Wilkisson, attached to set-aside motion, ¶¶ 3, 16. Ms. Wilkisson forwarded the documents to George Riker, president of Staffco Greenhouses, Inc., who returned them to Ms. Wilkisson on or shortly before October 25, 1996 and instructed her to forward them to New Jersey Manufacturers Insurance Company for appropriate action. *Id*. ¶¶ 6, 20-21. On October 29, 1996, the date upon which default was entered against these defendants, the documents reached the insurer. *Id*. ¶ 23. On November 12, 1996, the insurer wrote to Stafford Glass Company, Inc. denying coverage for the claims asserted in the complaint. *Id.* ¶ 24. Ms. Wilkisson sent additional documents to the insurer on November 18, 1996 and December 11, 1996. *Id*. ¶¶ 25-27. On December 17, 1996 the moving defendants were notified that counsel had been retained by the insurer to represent them in this action. *Id*. ¶ 28. The present

[2] The moving defendants maintain that Staffco, Inc. never existed as a separate corporate entity but was merely a name used by Staffco Greenhouses, Inc. in the course of its business.

counsel for these defendants entered his appearance on December 24, 1996, Notice of Appearance of Robert V. Hoy, Esq., and the motion of the initial counsel for leave to withdraw was granted on January 14, 1997, Docket No. 11.

This recitation of the sequence of events shows little other than carelessness by the moving defendants. *See Phillips v. Weiner*, 103 F.R.D. 177, 180 (D. Me. 1984) (sloppy handling of complaint within insurance company "not a strong" excuse for failing to answer complaint until 21st day after service). In addition to this fact, the eight month delay in moving for relief from the default itself provides a sufficient basis to deny the motion. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2698 (2d ed. 1983) at 533. *See American Metals Serv. Export Co. v. Ahrens Aircraft, Inc.*, 666 F.2d 718, 721 (1st Cir. 1981) (5-month delay in bringing motion to set aside default judgment, standing alone, is sufficient basis to deny motion); *Morgan v. Hatch*, 118 F.R.D. 6, 9 (D. Me. 1987) (6 weeks constitutes excessive delay). In the absence of any showing of good cause for the default or that these defendants were in any way prevented from bringing this motion substantially earlier in this case, well before the expiration of the discovery period and other deadlines set in the court's scheduling order, I conclude that the defendants are not entitled to the relief they seek.

Accordingly, the motion of defendants Staffco, Inc., Staffco Greenhouses, Inc. and Stafford Glass Company, Inc. to set aside the default is **DENIED**.

Dated at Portland, Maine this 15th day of July, 1997.

David M. Cohen
United States Magistrate Judge